

Message Text

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ORIGIN EB-07

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI

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E.O. 11652: N/A

TAGS: EINV, KE

SUBJECT: SAUL CLAIM

REFS: (A) NAIROBI 8858; (B) STATE 204687; (C) NAIROBI 8224

1. THIS CABLE IS INTENDED TO EXPLAIN THE CONCERNS UNDERLYING REF B, AND TO ELICIT FURTHER EMBASSY COMMENT ON HOW BEST TO PROCEED IN THIS MATTER.

2. WE SHARE EMBASSY'S VIEW THAT WE SHOULD NOT APPEAR TO BECOME TOO CLOSELY IDENTIFIED AT THIS POINT WITH THE MERITS OF THE RESPECTIVE POSITIONS ON VALUATION TAKEN BY SAUL AND THE GOK. WE ALSO RECOGNIZE THAT THE GOK HAS BEEN AND IS LIKELY TO REMAIN EXTREMELY SENSITIVE ON THESE ISSUES.

3. AT THE SAME TIME, SHOULD A PROTRACTED STALEMATE OCCUR, WE COULD BE FACED AT SOME POINT WITH A DIFFICULT DECISION

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REGARDING THE ADEQUACY OF THE GOK OFFER, PARTICULARLY AS

THIS JUDGMENT MIGHT RELATE TO CONSTRUCTION AND APPLICATION OF STATUTES CALLING FOR THE USG TO WITHHOLD ECONOMIC BENEFITS (TRADE PREFERENCES, BILATERAL ASSISTANCE, AND SUPPORT FOR LOANS IN INTERNATIONAL DEVELOPMENT BANKS) FROM COUNTRIES WHICH EXPROPRIATE AMERICAN-OWNED PROPERTY WITHOUT TAKING THE REQUIRED STEPS TOWARD PAYMENT OF FAIR

COMPENSATION.

4. WE WOULD MUCH PREFER TO AVOID MAKING SUCH A DECISION, AND SO ARE INTERESTED IN DOING WHAT WE CAN TO HELP MAINTAIN OR RENEW MOMENTUM TOWARD SETTLEMENT OF THE CASE BY THE PARTIES THEMSELVES. THIS CONCERN UNDERLIES THE SUGGESTION REITERATED REF B THAT YOU RAISE WITH SAUL'S ATTORNEYS THE POSSIBLE UTILITY OF FACE-TO-FACE NEGOTIATIONS. FROM OUR PERSPECTIVE, IT IS NOT CLEAR THAT THE WRITTEN POSITIONS PREVIOUSLY TAKEN BY THE PARTIES ARE NECESSARILY FINAL, AND WE BELIEVED IT MIGHT BE USEFUL TO CONSIDER WHETHER SUCH DISCUSSIONS, MOST LIKELY ON AN AD REFERENDUM BASIS, COULD PROVIDE THE PARTIES WITH A LESS FORMAL, MORE FLEXIBLE MEANS OF EXPLORING ALTERNATIVE SOLUTIONS AND IDENTIFYING AREAS IN WHICH THEIR INTERESTS MIGHT POSSIBLY CONVERGE. WE DID NOT INTEND TO IMPLY THAT THE EMBASSY NEED APPROACH THE GOK TO SUGGEST THAT IT TAKE THE INITIATIVE IN SEEKING SUCH CONTACTS, AND WE WOULD STILL APPRECIATE EMBASSY COMMENTS ON THE DESIRABILITY OF SUGGESTING THIS APPROACH TO SAUL'S REPRESENTATIVES. OUR INTEREST REMAINS IN SEEKING TO ENCOURAGE THE PARTIES THEMSELVES TO REACH A PROMPT, FAIR, AND MUTUALLY-SATISFACTORY OUTCOME TO A DISPUTE WHICH, UNTIL RESOLVED, CONTINUES TO BE A POTENTIALLY TROUBLESOME FACTOR IN OUR BILATERAL RELATIONS.

5. AS WE READ REFS A AND C, THE EMBASSY HAS NOT YET RESPONDED TO ARONSON'S SUGGESTION THAT THE USG "FLOAT" SAUL'S PROPOSAL FOR A COOPERATIVE VENTURE. WE UNDERSTAND EMBASSY RELUCTANCE TO DO SO, AND WE INSTEAD BELIEVE THAT SAUL'S REPRESENTATIVES SHOULD BE ENCOURAGED TO PROCEED ASAP TO MAKE THIS OR ANY OTHER PROPOSAL TO THE GOK WHICH THEY BELIEVE MIGHT HELP TO BREAK THE APPARENT IMPASSE LIMITED OFFICIAL USE

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(AND WE WOULD BE INTERESTED IN KNOWING THE REASONS FOR ANY RELUCTANCE TO DO SO EXPRESSED ON THEIR PART). IN RESPONDING TO ARONSON, EMBASSY MIGHT ALSO POINT OUT THAT WE ARE INTERESTED IN HELPING TO BRING ABOUT A SATISFACTORY RESULT, BUT THAT WE VIEW IT AS PRIMARILY THE RESPONSIBILITY OF THE PARTIES TO MAKE SPECIFIC PROPOSALS AND TO ENGAGE IN DETAILED DISCUSSIONS OF THEIR MERITS. IN ADDITION, WE MIGHT BRING TO THE ATTENTION OF SAUL'S REPRESENTATIVES,

IF WE HAVE NOT ALREADY DONE SO, USG AWARENESS OF LEGAL PROCEDURES REPORTED REF A AS ILLUSTRATIVE, AT LEAST ON THEIR FACE, OF ADDITIONAL REMEDIES WHICH SAUL MIGHT CONSIDER PURSUING SHOULD FURTHER DISCUSSIONS BETWEEN THE PARTIES PROVE UNPRODUCTIVE.

6. WE ALSO BELIEVE THAT IT MIGHT BE USEFUL FOR THE GOK TO

CONTINUE TO BE REMINDED ON APPROPRIATE OCCASIONS -- WITHOUT THE EMBASSY TAKING A POSITION ON THE MERITS OF OUTSTANDING PROPOSALS, OR OTHERWISE ACTING IN A WAY WHICH EMBASSY BELIEVES WOULD UNDERCUT ITS ABILITY TO PLAY A "GOOD OFFICES" ROLE -- OF OUR AWARENESS OF THE CASE, OUR UNDERSTANDING THAT IT HAS NOT YET BEEN RESOLVED, AND OUR INTEREST IN A PROMPT, FAIR, AND MUTUALLY-SATISFACTORY OUTCOME. THE TIMING, MANNER, AND CONTENT OF SUCH APPROACHES (TO BOTH SIDES) WOULD BE LEFT TO EMBASSY'S DISCRETION. FYK. WE GENERALLY DO NOT CONSIDER EMBASSY REPRESENTATIONS TO ENCOURAGE A HOST GOVERNMENT TO CONTINUE NEGOTIATIONS TO BE TANTAMOUNT TO TAKING A POSITION, EVEN TACITLY, ON THE MERITS OF A DISPUTE. THE RATIONALE FOR SUCH AN APPROACH IS MERELY THAT AN OUTSTANDING DISPUTE EXISTS WHICH, IF NOT SATISFACTORILY RESOLVED, MAY BECOME AN IRRITANT IN OUR BILATERAL RELATIONS. END FYI.

7. WE APPRECIATE EMBASSY'S CONTINUING EFFORTS IN THIS CASE, AND AWAIT YOUR COMMENTS ON THE FOREGOING. ROBINSON

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